

FORM
N-324
(Rev. 2007)

ETHANOL FACILITY TAX CREDIT

TAX
YEAR

2007

Or fiscal year beginning _____, 2007, and ending _____, 20____

ATTACH TO FORM N-11, N-15, N-20, N-30, N-35, N-40, OR N-70NP, WHICHEVER IS APPLICABLE.

Name(s) as shown on Form N-11, N-15, N-20, N-30, N-35, N-40, or N-70NP

SSN or FEIN

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM CERTIFICATE

(Completed by the Department of Business Economic Development and Tourism only)

1. Name of taxpayer			2. SSN/FEIN		
3. Address(es) of facility			4. Tax Map Key Number(s) of facility		
5. Total qualifying investment amount: \$	6. Facility's nameplate capacity:	7. Percentage of nameplate capacity facility operated at in tax year 2007:			
8. Date facility began production:			9. Credit period:		
10. Credit allowed for each taxable year in credit period:					
Year		Credit Amount			
First year					
Second year					
Third year					
Fourth year					
Fifth year					
Sixth year					
Seventh year					
Eighth year					
Cumulative amount of credit allowed during credit period					
11. Amount of tax credit allowed for tax year 2007 \$					
<p>This is to certify that the amounts noted above have been verified in accordance with section 235-110.3, Hawaii Revised Statutes (HRS).</p>					
Signature of Certifying Officer			Date of Certification		
(Type or Print Name and Title)			Certification Number		

COMPUTATION OF TAX CREDIT (Completed by Taxpayer)

Note: If you are only claiming your distributive share of a tax credit distributed from a partnership, an S corporation, an estate or a trust, skip line 12 and begin on line 13.

12 Total amount of certified tax credit allowed for tax year 2007 from line 11	12	
13 Flow through of Hawaii ethanol facility tax credit received from other entities, if any:		
Check the applicable box below. Enter the name and Federal Employer I.D. No. of Entity:		
a <input type="checkbox"/> Partner — enter amount from Schedule K-1 (Form N-20), line 22		
b <input type="checkbox"/> S corporation shareholder — enter amount from Schedule K-1 (Form N-35), line 12k		
c <input type="checkbox"/> Beneficiary — enter amount from Schedule K-1 (Form N-40), line 9		
d <input type="checkbox"/> Patron — enter the amount from federal Form 1099-PATR		
14 Total credit allowed — Add lines 12 and 13 and enter the result here, rounded to the nearest dollar for individual taxpayers, and on the appropriate line for the credit on Schedule CR (for Form N-11, N-15, N-30, and N-70NP filers); Form N-20, Schedule K; Form N-35, Schedule K; or Form N-40, Schedule F (for the estate's or trust's share) and/or Schedule K-1 (for the beneficiaries' share); whichever is applicable.	13	
	14	

GENERAL INSTRUCTIONS

Section 235-110.3, HRS, provides that each year during the credit period, there shall be

allowed to each taxpayer subject to Hawaii income taxes, an ethanol facility tax credit that shall be applied to the taxpayer's net income tax liability, if any, for the taxable year in which the

credit is properly claimed. For each qualified ethanol production facility, the annual dollar amount of the ethanol facility tax credit during the eight-year credit period shall be equal to

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thirty per cent of its nameplate capacity if the nameplate capacity is greater than five hundred thousand but less than fifteen million gallons. A taxpayer may claim this credit for each qualifying ethanol facility; provided that:

- (1) The claim for this credit by any taxpayer of a qualifying ethanol production facility shall not exceed one hundred per cent of the total of all investments made by the taxpayer in the qualifying ethanol production facility during the credit period;
- (2) The qualifying ethanol production facility operated at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis;
- (3) The qualifying ethanol production facility is in production on or before January 1, 2017; and
- (4) No taxpayer that claims the credit under this section shall claim any other Hawaii income tax credit for the same taxable year.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every qualifying ethanol production facility. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a), HRS.

Definitions

"Credit period" means a maximum period of eight years beginning from the first taxable year in which the qualifying ethanol production facility begins production even if actual production is not at seventy-five per cent of nameplate capacity.

"Investment" means a nonrefundable capital expenditure related to the development and construction of any qualifying ethanol production facility, including processing equipment, waste treatment systems, pipelines, and liquid storage tanks at the facility or remote locations, including expansions or modifications. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A of the Internal Revenue Code (IRC), relating to uniform capitalization costs, but shall not include expenses for compensation paid to officers of the taxpayer, pension and other related costs, rent for land, the costs of repairing and maintaining the equipment or facilities, training of operating personnel, utility costs during construction, property taxes, costs relating to negotiation of commercial agreements not related to development or construction, or service coats that can be identified specifically with a service department or function or that directly benefit or are incurred by reason of a service department or function. For the purposes of determining a capital expenditure for the credit, the provisions of section 263A of the IRC shall apply as it read on March 1, 2004. For purposes of the tax credit, investment excludes land costs and includes any investment for which the taxpayer is at risk, as that term is used in section 465 of the IRC (with respect to deductions limited to amount at risk).

"Nameplate capacity" means the qualifying ethanol production facility's production design capacity, in gallons of motor fuel grade ethanol per year.

"Net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

"Qualifying ethanol production" means ethanol produced from renewable, organic feedstocks, or waste materials, including municipal solid waste. All qualifying production shall be fermented, distilled, gasified, or produced by physical chemical conversion methods such as reformation and catalytic conversion and dehydrated at the facility.

"Qualifying ethanol production facility" or "facility" means a facility located in Hawaii which produces motor fuel grade ethanol meeting the minimum specifications by the American Society of Testing and Materials standard D-4806, as amended.

In the case of a taxable year in which the cumulative claims for the credit by the taxpayer of a qualifying ethanol production facility exceeds the cumulative investment made in the qualifying ethanol production facility by the taxpayer, only that portion that does not exceed the cumulative investment shall be claimed and allowed.

The tax credit allowable over the credit period is capped at 100 percent of the qualifying investment. For example, Company X invests \$7.1 million in a qualifying ethanol production facility with an annual nameplate capacity of 7.2 million gallons. The total tax credit allowable each year is 30 per cent of the nameplate capacity dollar amount (0.30 X 7,200,000 gallons) or \$2,160,000 until the \$7.1 million investment is recovered. Company X may claim a \$2.16 million tax credit each year for three years and a \$620,000 tax credit in the fourth year.

If the credit exceeds the taxpayer's income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the tax credit shall be made for amounts less than \$1. All claims for a credit must be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

If a qualifying ethanol production facility or an interest therein is acquired by a taxpayer prior to the expiration of the credit period, the credit allowable for any period after such acquisition shall be equal to the credit that would have been allowable to the prior taxpayer had the taxpayer not disposed of the interest. If an interest is disposed of during any year for which the credit is allowable, the credit shall be allowable between the parties on the basis of the number of days during the year the interest was held by each taxpayer. In no case shall the credit be allowed after the expiration of the credit period.

Once the total nameplate capacities of qualifying ethanol production facilities built within the State reaches or exceeds a level of forty million gallons per year, credits shall not be allowed for new ethanol production facilities. If a new facility's production capacity would cause the statewide ethanol production capacity to exceed forty million gallons per year, only the ethanol production capacity that does not exceed the statewide forty million gallon per year level shall be eligible for the credit.

If a qualifying ethanol production facility fails to achieve an average annual production of at least seventy-five per cent of its nameplate capacity for two consecutive years, the stated capacity of that facility may be revised by the Director of Business, Economic Development, and Tourism to reflect actual production for the purposes of determining statewide production capacity and allowable credits for that facility. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F, HRS.

INFORMATION REPORTING REQUIREMENTS FOR THE TAXPAYER PRODUCING ETHANOL

1. Prior to construction of any new qualifying ethanol production facility, the taxpayer shall provide written notice of the tax-

payer's intention to begin construction of a qualifying ethanol production facility. The information shall be provided to the Department of Taxation and the Department of Business, Economic Development, and Tourism on forms provided by the Department of Business, Economic Development, and Tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer's contact information. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F, HRS.

2. The taxpayer shall provide written notice to the Director of Taxation and the Director of Business, Economic Development, and Tourism within thirty days following the start of production. The notice shall include the production start date and expected ethanol fuel production for the next twenty-four months. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F, HRS. Attach a copy of this notice to Form N-324 for the first year the credit is claimed.
3. Each calendar year during the credit period, the taxpayer shall provide information to the Director of Business, Economic Development, and Tourism on the number of gallons of ethanol produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, feedstocks used for ethanol production, the number of employees of the facility, and the projected number of gallons of ethanol production for the succeeding year.

CERTIFYING CREDITS BY THE DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

The Department of Business, Economic Development, and Tourism shall:

- (1) Maintain records of the total amount of investment made by each taxpayer in facility;
- (2) Verify the amount of the qualifying investment;
- (3) Total all qualifying and cumulative investments that the Department of Business, Economic Development, and Tourism certifies;
- (4) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

Upon each determination, the Department of Business, Economic Development, and Tourism shall issue a certificate to the taxpayer verifying the qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the Department of Taxation. Notwithstanding the Department of Business, Economic Development, and Tourism's certification authority, the Director of Taxation may audit and adjust certification to conform to the facts.

If in any year, the annual amount of certified credits reaches \$12,000,000 in the aggregate, the Department of Business, Economic Development, and Tourism shall immediately discontinue certifying credits and notify the Department of Taxation. In no instance shall the total amount of certified credits exceed \$12,000,000 per year. Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F, HRS.